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August 8, 2003

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Electronic Comment File Submission
http://gulfoss2.fcc.gov/prod/ecfs/upload_v2.cgi

WT Docket No. 03-128

**RE: Nationwide Programmatic Agreement Regarding the Section 106 National
Historic Preservation Act Review Process**

Dear Ms. Dortch,

The Appalachian Trail Conference (ATC) wishes to comment on the above referenced draft Nationwide Programmatic Agreement per the instructions contained in the Notice of Proposed Rule Making (NPRM)ⁱ issued June 9th, 2003. ATC is a private not-for profit organization dedicated to the protection and preservation of the Appalachian National Scenic Trail and in our efforts we have had extensive experience working with the wireless telecommunications industry in attempting to address the visual impacts of telecommunications facilities on National Scenic Trails. As public demand for wireless communication continues to mushroom, the associated infrastructure necessary to provide that service increasingly threatens the scenic values Congress sought to protect when the National Trails Systems Actⁱⁱ in establishing the Appalachian Trail as the first National Scenic Trail.

In our efforts to protect the Appalachian Trail from the imminent threat of telecommunications tower proliferation, as well as the other seven National Scenic Trails, ATC, along with the American Hiking Society, approached the FCC in 1998 to discuss a rule change to include National Scenic Trails as an additional trigger requiring an Environmental Assessment (EA) under the current FCC rulesⁱⁱⁱ concerning compliance with the National Environmental Policy Act (NEPA)^{iv}. Through those initial talks, the FCC recommended a different course of action to afford some protection to National Scenic Trails and led to the eventual negotiation of an unprecedented voluntary

Resolution^v between the Cellular Telecommunications and Internet Association (CTIA) and the Personal Communications Industry Association (PCIA) with managers of all eight national scenic trails.

The intent of the Resolution was to provide a mechanism for early notification of potential tower construction near National Scenic Trails to allow both parties to work cooperatively towards a mutually agreeable solution that would permit the construction of a tower without causing significant visual impact on a National Scenic Trail. Section II (A.) of the Resolution states that “If an Applicants or other entities propose to site a wireless telecommunications facility within one mile of a National Scenic Trail, then the applicant will voluntarily notify the (Managing Trail Organization)...”

The draft Programmatic Agreement in question includes a similar mechanism that would streamline the NHPA^{vi} review procedures. Specifically, Section III, “Undertakings Excluded From Section 106 Review”, essentially excludes Section 106 review by the SHPO/THPO for all of the sections listed III.A.1 through III.A.6. However, section III.A.5. notes three exceptions that would not be exempt from Section 106 review. Item (3) of that paragraph states that “Undertakings shall not be excluded from review if...the proposed Facility lies within 3/4 mile of and is visible from a unit of the National Park System that is listed or eligible for listing in the National Register, or National Historic Landmark.

The Appalachian Trail Conference strongly believes that the “within 3/4 mile and is visible” language does not provides sufficient protections for requiring Section 106 review. A Facility of up to 400 feet and/or more than 3/4 mile from a unit of the National Park System that is listed or eligible for listing on the National Register or a National Landmark could in fact have a very significant impact.

A distance of one mile was arrived at through negotiation with CTIA and PCIA regarding National Scenic Trails and that distance should also apply to the Programmatic Agreement concerning units of the National Park System in section III.A.5. Our concerns stem from the fact that the Appalachian Trail is a unit of the National Park System and may be eligible for listing on the National Register and that the 3/4 mile language will create both a double standard and confusion regarding the existing Resolution that specifies a one mile standard for consultation and review.

Options to correct this discrepancy include:

- Leave the language as is but increase the distance from 3/4 mile to one mile; or,
- Leave the 3/4 mile distance but change “...and is visible...” to “...*or* is visible...”; or,
- Make an additional exception item in that paragraph within III.A.5 “(4) the proposed facility lies within one mile or is visible from a National Scenic Trail that is listed or eligible for listing in the National Register, or a National Historic Landmark.”

In addition, section VI., "Identification, Evaluation, and Assessment of Effects", ignores the one mile standard established by the Resolution. The Area of Potential Affect (APE) listed under VI.2.a should be set at *one mile, regardless of proposed tower height*. This will greatly simplify the requirements of this section and ensure consistency with existing standards. The Appalachian Trail Conference also supports the additional language described in footnote 12 establishing the APE for towers over 1,000 feet in consultation with the SHPO.

Thank you for the opportunity to comment on the draft Programmatic Agreement. The Appalachian Trail Conference supports the FCC's efforts to enhance historic preservation and streamline the regulatory process through cooperation. The above recommendations should help to further streamline the Programmatic Agreement and reduce conflicting standards with existing agreements in order to provide the framework for assuring adequate protection to the historic resource of the Appalachian National Scenic Trail. Please feel free to contact me if I can be of further assistance.

Sincerely,



J. David Reus
Management Projects Coordinator

ⁱ FCC 03-125

ⁱⁱ National Trails System Act: 16 U.S.C. § 1242 (a)(2)

ⁱⁱⁱ 47 C.F.R. § 1.1307

^{iv} 42 U.S.C. § 4321 et. Seq.

^v "Siting of Wireless Telecommunications Facilities Near National Scenic Trails" October 5, 1999 (see <http://www.appalachiantrail.org/protect/pdfs/resolution.pdf>)

^{vi} 16 U.S.C § 470